

HOUSE BILL NO. 116

INTRODUCED BY D. MOOD

BY REQUEST OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE DEFINED CONTRIBUTION PLAN PROVISIONS UNDER THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; COMPLYING WITH INTERNAL REVENUE CODE REQUIREMENTS; LIMITING LIABILITY; REVISING THE ALLOCATION OF CURRENT CONTRIBUTIONS TO AN EDUCATION FUND; REVISING HOW FAMILY LAW ORDERS AND EXECUTION OF WITHHOLDING AND SUPPORT OBLIGATION ORDERS MAY BE APPLIED; ~~REDUCING THE SERVICE REQUIRED FOR VESTING~~; REVISING THE USE OF FORFEITURES; MAKING CONTRACTED SERVICES DISCRETIONARY; CLARIFYING PLAN CHOICE PROVISIONS FOR UNIVERSITY EMPLOYEES; ELIMINATING A PROHIBITION ON REJOINING THE DEFINED BENEFIT PLAN UNDER THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; REVISING THE INTEREST CREDITED ON AMOUNTS TRANSFERRED TO THE DEFINED CONTRIBUTION PLAN; CLARIFYING TRANSFER AND ROLLOVER PROVISIONS; REVISING MINIMUM ACCOUNT BALANCE PROVISIONS; REVISING CERTAIN PROVISIONS OF THE OPTIONAL RETIREMENT PROGRAM; AMENDING SECTIONS 19-2-303, 19-2-401, 19-2-907, 19-2-909, 19-2-1001, 19-2-1002, 19-2-1003, 19-2-1004, 19-2-1005, 19-2-1006, 19-2-1007, 19-3-2101, 19-3-2102, 19-3-2111, 19-3-2112, 19-3-2113, 19-3-2114, 19-3-2115, 19-3-2116, 19-3-2117, 19-3-2121, 19-3-2122, 19-3-2123, 19-3-2124, 19-3-2125, 19-3-2126, 19-3-2133, 19-21-101, 19-21-103, 19-21-201, 19-21-202, AND 19-21-203, MCA, AND SECTIONS 79 AND 81, CHAPTER 471, LAWS OF 1999; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 19-2-303, MCA, is amended to read:

"19-2-303. (Temporary) Definitions. Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a system, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the

1 required contributions, and is properly reported to the board for the most current reporting period.

2 (3) "Actuarial cost" means the amount determined by the board in a uniform and
3 nondiscriminatory manner to represent the present value of the benefits to be derived from the additional
4 service to be credited based on the most recent actuarial valuation for the system and the age, years until
5 retirement, and current salary of the member.

6 (4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the
7 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded
8 annually.

9 (5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a
10 retirement system over the present value of future normal costs in that retirement system.

11 (6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

12 (7) "Additional contributions" means contributions made by a member to purchase various types
13 of optional service credit as allowed by the applicable retirement system.

14 (8) "Annuity" means equal and fixed payments for life that are the actuarial equivalent of a
15 lump-sum payment under a retirement system and as such are not benefits paid by a retirement system
16 and are not subject to periodic or one-time increases.

17 (9) "Benefit" means the service or disability retirement or survivorship benefit payment provided
18 by a retirement system.

19 (10) "Board" means the public employees' retirement board provided for in 2-15-1009.

20 (11) "Contingent annuitant" means a person designated to receive a continuing monthly benefit
21 after the death of a retired member.

22 (12) "Credited service" or "service credit" means the periods of time for which the required
23 contributions have been made to a retirement system and that are used to calculate service or disability
24 retirement or survivorship benefits under a retirement system.

25 (13) "Department" means the department of administration.

26 (14) "Designated beneficiary" means the person designated by a member or payment recipient to
27 receive any survivorship benefits or lump-sum payments upon the death of the member or payment
28 recipient, including annuities derived from the benefits or payments.

29 (15) "Disability" means a total inability of the member to perform the member's duties by reason
30 of physical or mental incapacity. The disability must be incurred while the member is an active member

1 and must be one of permanent duration or of extended and uncertain duration, as determined by the board
2 on the basis of competent medical opinion.

3 (16) "Employee" means a person who is employed by an employer in any capacity and whose
4 salary is being paid by the employer.

5 (17) "Employer" means a governmental entity participating in a retirement system enumerated in
6 19-2-302 on behalf of its eligible employees.

7 (18) "Essential elements of the position" means fundamental job duties. An element may be
8 considered essential because of but not limited to the following factors:

9 (a) the position exists to perform the element;

10 (b) there are a limited number of employees to perform the element; or

11 (c) the element is highly specialized.

12 (19) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the
13 following June 30.

14 (20) "Inactive member" means a member who is not an active or retired member.

15 (21) "Internal Revenue Code" means the federal Internal Revenue Code of 1954 or 1986, as
16 applicable to a retirement system, as that code provided on July 1, 1999.

17 (22) "Member" means any person with accumulated contributions and service credited with a
18 retirement system or receiving a retirement benefit on account of the person's previous service credited
19 in a retirement system.

20 (23) "Membership service" or "years of service" means the periods of service that are used to
21 determine eligibility for retirement or other benefits.

22 (24) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost
23 method required to fund accruing benefits for members of a retirement system during any year in the
24 future. Normal cost does not include any portion of the supplemental costs of a retirement system.

25 (25) "Pension" means benefit payments for life derived from contributions to a system made from
26 state- or employer-controlled funds.

27 (26) "Pension trust fund" means a fund established to hold the contributions, income, and assets
28 of a retirement system in public trust.

29 (27) "Regular contributions" means contributions required from members under a retirement
30 system.

1 (28) "Regular interest" means interest at the rate set from time to time by the board.

2 (29) "Retirement" or "retired" means the status of a member who has been terminated from
3 service for at least 30 days and has received and accepted a retirement benefit from a retirement system.

4 (30) "Retirement benefit" means the periodic benefit payable as a result of service, early, or
5 disability retirement under a retirement system. An annuity is not a retirement benefit.

6 (31) "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan
7 under one of the public employee retirement systems enumerated in 19-2-302.

8 (32) "Retirement system" or "system" means one of the public employee retirement systems
9 enumerated in 19-2-302.

10 ~~(32)~~(33) "Service" means employment of an employee in a position covered by a retirement
11 system.

12 ~~(33)~~(34) "Statutory beneficiary" means the surviving spouse or dependent child or children of a
13 member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system
14 who are statutorily designated to receive benefits upon the death of the member.

15 ~~(34)~~(35) "Supplemental cost" means an element of the total actuarial cost of a retirement system
16 arising from benefits payable for service performed prior to the inception of the retirement system or prior
17 to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to
18 fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are
19 included in the unfunded actuarial liabilities of the retirement system.

20 ~~(35)~~(36) "Survivorship benefit" means payments for life to the statutory or designated beneficiary
21 of a deceased member who died while in service under a retirement system.

22 ~~(36)~~(37) "Termination of employment" or "termination of service" means that the member has
23 severed the employment relationship with the employer and has been paid all compensation due upon
24 termination of employment, including but not limited to payment of accrued annual leave credits, as
25 provided in 2-18-617, and payment of accrued sick leave credits, as provided in 2-18-618. For purposes
26 of this subsection, compensation as a result of legal action, court order, appeal, or settlement to which
27 the board was not party is not a payment due upon termination.

28 ~~(37)~~(38) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a retirement
29 system's actuarial liabilities at any given point in time over the value of its cash and investments on that
30 same date.

1 ~~(38)~~(39) "Vested member" or "vested" means a member or the status of a member who has
 2 attained the minimum membership service requirements to be eligible for retirement benefits under a
 3 retirement system.

4 ~~(39)~~(40) "Written application" means a written instrument, specified by the board, properly
 5 executed, and filed with the board, that contains all the information required by the board, including
 6 documentation that the board considers necessary.

7 **19-2-303. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier)**
 8 **Definitions.** Unless the context requires otherwise, for each of the retirement systems subject to this
 9 chapter, the following definitions apply:

10 ~~(1) "Account balance" means all contributions, income, and other assets in a retirement account~~
 11 ~~that have, pursuant to 19-3-2116, vested to a member of the defined contribution plan.~~

12 ~~(2)~~ "Accumulated contributions" means the sum of all the regular and any additional contributions
 13 made by a member in a defined benefit plan, together with the regular interest on the contributions.

14 ~~(3)~~(2) "Active member" means a member who is a paid employee of an employer, is making the
 15 required contributions, and is properly reported to the board for the most current reporting period.

16 ~~(4)~~(3) "Actuarial cost" means the amount determined by the board in a uniform and
 17 nondiscriminatory manner to represent the present value of the benefits to be derived from the additional
 18 service to be credited based on the most recent actuarial valuation for the system and the age, years until
 19 retirement, and current salary of the member.

20 ~~(5)~~(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the
 21 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded
 22 annually.

23 ~~(6)~~(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under
 24 a defined benefit retirement plan over the present value of future normal costs in that retirement plan.

25 ~~(7)~~(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

26 ~~(8)~~(7) "Additional contributions" means contributions made by a member of a defined benefit plan
 27 to purchase various types of optional service credit as allowed by the applicable retirement plan.

28 ~~(9)~~(8) "Annuity" means:

29 (a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial
 30 equivalent of a lump-sum payment under a retirement plan and as such are not benefits paid by a

1 retirement plan and are not subject to periodic or one-time increases; or

2 (b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular
3 intervals.

4 ~~(10)~~(9) "Benefit" means:

5 (a) the service or disability retirement or survivorship benefit payment provided by a defined
6 benefit retirement plan; or

7 (b) a payment or distribution under the defined contribution retirement plan for the exclusive
8 benefit of a plan member or the member's beneficiary or an annuity purchased under 19-3-2124.

9 ~~(11)~~(10) "Board" means the public employees' retirement board provided for in 2-15-1009.

10 ~~(12)~~(11) "Contingent annuitant" means a person designated to receive a continuing monthly benefit
11 after the death of a retired member.

12 ~~(13)~~(12) "Covered employment" means employment in a covered position.

13 ~~(14)~~(13) "Covered position" means a position in which the employee must be a member of the
14 retirement system except as otherwise provided by law.

15 ~~(15)~~(14) "Credited service" or "service credit" means the periods of time for which the required
16 contributions have been made to a retirement plan and that are used to calculate service or disability
17 retirement or survivorship benefits under a defined benefit retirement plan.

18 ~~(16)~~(15) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the
19 retirement systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

20 ~~(17)~~(16) "Defined contribution retirement plan" or "defined contribution plan" means the plan
21 within the public employees' retirement system established in 19-3-103 that is provided for in chapter 3,
22 part 21, of this title and that is not a defined benefit plan.

23 ~~(18)~~(17) "Department" means the department of administration.

24 ~~(19)~~(18) "Designated beneficiary" means the person designated by a member or payment recipient
25 to receive any survivorship benefits, lump-sum payments, or benefit from a retirement account upon the
26 death of the member or payment recipient, including annuities derived from the benefits or payments.

27 ~~(20)~~(19) "Disability" means a total inability of the member to perform the member's duties by
28 reason of physical or mental incapacity. The disability must be incurred while the member is an active
29 member and must be one of permanent duration or of extended and uncertain duration, as determined by
30 the board on the basis of competent medical opinion.

1 ~~(24)~~(20) "Employee" means a person who is employed by an employer in any capacity and whose
2 salary is being paid by the employer.

3 ~~(22)~~(21) "Employer" means a governmental entity participating in a retirement system enumerated
4 in 19-2-302 on behalf of its eligible employees.

5 ~~(23)~~(22) "Essential elements of the position" means fundamental job duties. An element may be
6 considered essential because of but not limited to the following factors:

7 (a) the position exists to perform the element;

8 (b) there are a limited number of employees to perform the element; or

9 (c) the element is highly specialized.

10 ~~(24)~~(23) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending
11 the following June 30.

12 ~~(25)~~(24) "Inactive member" means a member who is not an active or retired member.

13 ~~(26)~~(25) "Internal Revenue Code" means the federal Internal Revenue Code of 1954 or 1986, as
14 applicable to a retirement system, as that code provided on July 1, 1999.

15 ~~(27)~~(26) "Member" means either:

16 (a) a person with accumulated contributions and service credited with a defined benefit retirement
17 plan or receiving a retirement benefit on account of the person's previous service credited in a retirement
18 system; or

19 (b) a person with a retirement account in the defined contribution plan.

20 ~~(28)~~(27) "Membership service" or "years of service" means the periods of service that are used
21 to determine eligibility for retirement or other benefits.

22 ~~(29)~~(28) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost
23 method required to fund accruing benefits for members of a defined benefit retirement plan during any year
24 in the future. Normal cost does not include any portion of the supplemental costs of a retirement plan.

25 ~~(30)~~(29) "Pension" means benefit payments for life derived from contributions to a retirement plan
26 made from state- or employer-controlled funds.

27 ~~(34)~~(30) "Pension trust fund" means a fund established to hold the contributions, income, and
28 assets of a retirement system or plan in public trust.

29 ~~(32)~~(31) "Plan choice rate" means the amount of the employer contribution as a percentage of
30 payroll covered by the defined contribution plan members that is allocated to the public employees'

1 retirement system's defined benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant
 2 to 19-3-2121 to actuarially fund the unfunded liabilities and the normal cost rate changes in a defined
 3 benefit plan resulting from member selection of the defined contribution plan.

4 ~~(33)~~(32) "Regular contributions" means contributions required from members under a retirement
 5 plan.

6 ~~(34)~~(33) "Regular interest" means interest at the rate set from time to time by the board.

7 ~~(35)~~(34) "Retirement" or "retired" means the status of a member who has been terminated from
 8 service for at least 30 days and has received and accepted a retirement benefit from a retirement plan.

9 ~~(36)~~(35) "Retirement account" means an individual account within the defined contribution
 10 retirement plan for the deposit of employer and employee contributions and other assets for the exclusive
 11 benefit of a member of the defined contribution plan or the member's beneficiary.

12 ~~(37)~~(36) "Retirement benefit" means:

13 (a) in the case of a defined benefit plan, the periodic benefit payable as a result of service, early,
 14 or disability retirement under a defined benefit plan of a retirement system. With respect to a defined
 15 benefit plan, the term does not mean an annuity.

16 (b) in the case of the defined contribution plan, a benefit as defined in subsection ~~(10)(b)~~ (9)(b).

17 (37) "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan
 18 under one of the public employee retirement systems enumerated in 19-2-302.

19 (38) "Retirement system" or "system" means one of the public employee retirement systems
 20 enumerated in 19-2-302.

21 (39) "Service" means employment of an employee in a position covered by a retirement system.

22 (40) "Statutory beneficiary" means the surviving spouse or dependent child or children of a
 23 member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system
 24 who are statutorily designated to receive benefits upon the death of the member.

25 (41) "Supplemental cost" means an element of the total actuarial cost of a defined benefit
 26 retirement plan arising from benefits payable for service performed prior to the inception of the retirement
 27 plan or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses,
 28 or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These
 29 costs are included in the unfunded actuarial liabilities of the retirement plan.

30 (42) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of

1 a deceased member who died while in service under a defined benefit retirement plan.

2 (43) "Termination of employment" or "termination of service" means that the member has severed
3 the employment relationship with the employer and has been paid all compensation due upon termination
4 of employment, including but not limited to payment of accrued annual leave credits, as provided in
5 2-18-617, and payment of accrued sick leave credits, as provided in 2-18-618. For purposes of this
6 subsection, compensation as a result of legal action, court order, appeal, or settlement to which the board
7 was not party is not a payment due upon termination.

8 (44) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit
9 retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments
10 on that same date.

11 (45) "Vested account" means an individual account within a defined contribution plan that is for
12 the exclusive benefit of a member or the member's beneficiary. A vested account includes all contributions
13 and the income on all contributions in each of the following accounts: the member's contribution account,
14 the vested portion of the employer's contribution account, and the member's account for other
15 contributions.

16 (46) "Vested member" or "vested" means:

17 (a) with respect to a defined benefit plan, a member or the status of a member who has attained
18 the minimum membership service requirements to be eligible for retirement benefits under the retirement
19 plan; or

20 (b) with respect to the defined contribution plan, a member or the status of a member who,
21 ~~pursuant to~~ meets the minimum membership service requirement of 19-3-2116, ~~is entitled to employer~~
22 ~~contributions and income on those contributions in the member's retirement account.~~

23 ~~(46)~~(47) "Written application" means a written instrument, specified by the board, properly
24 executed, and filed with the board, that contains all the information required by the board, including
25 documentation that the board considers necessary."

26

27 **Section 2.** Section 19-2-401, MCA, is amended to read:

28 ~~"19-2-401. (Temporary) Location of board -- jurisdiction and venue for judicial review -- quorum~~
29 ~~-- officers and employees. (1) The board shall maintain its office in the city of Helena. Jurisdiction and~~
30 ~~venue for judicial review of final administrative decisions of the board are in the first judicial district, Lewis~~

1 ~~and Clark County, unless otherwise stipulated by the parties.~~

2 ~~(2) A quorum of the board is three members.~~

3 ~~(3) The board shall elect one of its members presiding officer. The board may appoint a committee~~
 4 ~~of one or more of its members to perform routine acts, such as retirement of members and fixing of~~
 5 ~~retirement benefits, approval of death claims, and correction of records necessary in the administration~~
 6 ~~of the systems in accordance with the provisions of chapters 3, 5 through 9, 12, 13, and 15 of this title~~
 7 ~~and in accordance with the rules of the board. The attorney general is the legal counsel for the board.~~

8 **19-2-401. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Location**
 9 **of board -- jurisdiction and venue for judicial review -- quorum -- officers and employees.** (1) The board
 10 shall maintain its office in the city of Helena. Jurisdiction and venue for judicial review of final
 11 administrative decisions of the board are in the first judicial district, Lewis and Clark County, unless
 12 otherwise stipulated by the parties.

13 (2) A quorum of the board is four members.

14 (3) The board shall elect one of its members presiding officer. The board may appoint a committee
 15 of one or more of its members to perform routine acts, such as retirement of members and fixing of
 16 retirement benefits, approval of death claims, and correction of records necessary in the administration
 17 of the systems in accordance with the provisions of chapters 2, 3, 5 through 9, 13, ~~and 17,~~ and 50 of
 18 this title and in accordance with the rules of the board. The attorney general is the legal counsel for the
 19 board."

20

21 **NEW SECTION. Section 3. Limitation of liability.** (1) The board shall exercise its fiduciary authority
 22 in the same manner that would be used by a prudent person acting in the same capacity who is familiar
 23 with the circumstances and in an enterprise of a similar character with similar aims.

24 (2) Plan fiduciaries are not liable for any loss to a defined contribution plan or optional retirement
 25 program participant's or beneficiary's account that results from the participant's or beneficiary's exercise
 26 of control.

27 (3) Plan fiduciaries are not responsible for the acts or omissions of any vendor providing services
 28 to the defined contribution plan or optional retirement program. Nothing in this subsection limits the liability
 29 of any vendor for services required by contract.

30 (4) Plan fiduciaries are not liable for their reliance on the express provisions of the defined

1 contribution plan or optional retirement program.

2

3 **Section 4.** Section 19-2-907, MCA, is amended to read:

4 **"19-2-907. Alternate payees -- family law orders -- rulemaking.** (1) A participant in a retirement
5 system may have the participant's rights modified or recognized by a family law order.

6 (2) For purposes of this section:

7 (a) "family law order" means a judgment, decree, or order of a court of competent jurisdiction
8 under Title 40 concerning child support, parental support, spousal maintenance, or marital property rights
9 that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an
10 alternate payee in compliance with this section; and

11 (b) "participant" means an identified person who is a member or an actual or potential beneficiary,
12 survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter
13 3, 5, 6, 7, 8, 9, 13, or 17.

14 (3) A family law order must identify a participant and an alternate payee by full name, current
15 address, date of birth, and social security number. An alternate payee's rights and interests granted in
16 compliance with this section are not subject to assignment, execution, garnishment, attachment, or other
17 process. An alternate payee's rights or interests may be modified only by a family law order amending the
18 family law order that established the right or interest.

19 (4) A family law order may not require:

20 (a) a type or form of benefit, option, or payment not available to the affected participant under
21 the appropriate retirement system or plan; or

22 (b) an amount or duration of payment greater than that available to a participant under the
23 appropriate retirement system or plan.

24 (5) ~~It~~ With respect to a defined benefit plan, a family law order may ~~only~~ provide for payment to
25 an alternate payee only as follows:

26 (a) Service retirement benefit payments or withdrawals of member contributions may be
27 apportioned by directing payment of either a percentage of the amount payable or ~~payment of~~ a fixed
28 amount of no more than the amount payable to the participant. Payments to an alternate payee may be
29 limited to a specific amount each month if the number of payments is specified.

30 (b) The maximum amount of disability or survivorship benefits that may be apportioned to

1 alternate payees is the monthly benefit amount that would have been payable on the date of termination
2 of service if the member had retired without disability or death. Conversion of a disability retirement to a
3 service retirement pursuant to 19-2-406(4), 19-3-1015(2), 19-6-612(2), or 19-8-712(2) does not increase
4 the maximum monthly amount that may be apportioned to an alternate payee.

5 (c) Retirement benefit adjustments for which a participant is eligible after retirement may be
6 apportioned as a percentage only if existing benefit payments are apportioned as a percentage. The
7 adjustments must be apportioned as a percentage in the same ratio as existing benefit payments.

8 ~~(d) Payments must be limited to the life of the appropriate participant. The duration of payments~~
9 ~~to an alternate payee may be further limited only to a specified maximum time, the life of the alternate~~
10 ~~payee, or the life of a specified participant. Payments to an alternate payee may be limited to a specific~~
11 ~~amount each month if the number of payments is specified. The alternate payee's rights and interests~~
12 ~~survive the alternate payee's death and may be transferred by inheritance.~~

13 ~~(e)~~ The participant may be required to choose a specified form of benefit payment or designate
14 a beneficiary or contingent annuitant if the retirement system or plan allows for that option.

15 (6) With respect to a defined contribution plan, a family law order may provide for payment to an
16 alternate payee only as follows:

17 (a) The vested account of the participant may be apportioned by directing payment of either a
18 percentage or a fixed amount. The total amount apportioned may not exceed the amount in participant's
19 vested account. The alternate payee may receive the payment only as a direct payment, rollover, or
20 transfer. A new account may not be established for an alternate payee.

21 (b) If the participant is receiving periodic payments from an annuity provided under the plan, those
22 payments may be apportioned as a percentage of the amount payable to the participant. Payments to the
23 alternate payee may be limited to a specific amount each month if the number of payments is specified.
24 Payments may not total more than the amount payable to the payee.

25 (7) The duration of monthly payments apportioned from a defined benefit or defined contribution
26 plan participant to an alternate payee may not exceed the lifetime of the appropriate participant. The
27 duration of the monthly payments may be further limited only to a specified maximum time, the life of the
28 alternate payee, or the life of another specified participant. The alternate payee's rights and interests
29 survive the alternate payee's death and may be transferred by inheritance.

30 (8) The board may assess a participant or an alternate payee for all costs of reviewing and

1 administering a family law order, including reasonable attorney fees. The board may adopt rules to
2 implement this section.

3 ~~(7)~~(9) Each family law order establishing a final obligation concerning payments by the retirement
4 system must contain a statement that the order is subject to review and approval by the board.

5 ~~(8)~~(10) The board shall adopt rules to provide for the ~~application~~ administration of a family law
6 ~~order within the defined contribution plan orders.~~"

7

8 **Section 5.** Section 19-2-909, MCA, is amended to read:

9 **"19-2-909. Execution or withholding for support obligation -- rulemaking.** (1) Benefits in the
10 retirement systems or plans provided for in chapters 3, 5 through 9, 13, and 17 are subject to execution
11 and income withholding for the payment of a participant's support obligation.

12 (2) For purposes of this section, the following definitions apply:

13 (a) "Execution" means a warrant for distraint issued or a writ of execution obtained by the
14 department of public health and human services when providing support enforcement services under Title
15 IV-D of the Social Security Act.

16 (b) "Income withholding" means an income-withholding order issued under the provisions of Title
17 40, chapter 5, part 3 or 4, or an income-withholding order issued in another state as provided in 40-5-157.

18 (c) "Participant" means an identified person who is a member or an actual or potential beneficiary,
19 survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter
20 3, 5, 6, 7, 8, 9, 13, or 17.

21 (d) "Support obligation" has the meaning provided in 40-5-403 for a support order.

22 (3) The execution or income-withholding order may not require:

23 (a) a type or form of benefit, option, or payment not available to the affected participant under
24 the appropriate retirement system or plan; or

25 (b) an amount or duration of payment greater than that available to a participant under the
26 appropriate retirement system or plan.

27 (4) An execution or income-withholding order applied to a defined benefit retirement plan may
28 provide for payment only as follows:

29 (a) Service retirement benefit payments or withdrawals of member contributions may be
30 apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount

1 of no more than the amount payable to the participant.

2 (b) The maximum amount of disability or survivorship benefits that may be apportioned and paid
3 under this section is the monthly benefit amount that would have been payable on the date of termination
4 of service if the member had retired without disability or death.

5 (c) Retirement benefit adjustments for which a participant is eligible after retirement may be
6 apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in
7 the same ratio as existing benefit payments.

8 ~~(d) Payments must be limited to the life of the appropriate participant. The duration of payments
9 under this section may be further limited only to a specified maximum time or the life of a specified
10 participant. Payments may also be limited to a specific amount each month if the number of payments is
11 specified.~~

12 (5) With respect to a defined contribution plan, an execution or income-withholding order may
13 provide for payment to an alternate payee only as follows:

14 (a) The vested account of the participant may be apportioned by directing payment of either a
15 percentage or a fixed amount. The total amount apportioned may not exceed the amount in the
16 participant's vested account. The alternate payee may receive the payment only as a direct payment,
17 rollover, or transfer. A new account may not be established for an alternate payee.

18 (b) If the participant is receiving periodic payments from an annuity provided under the plan, those
19 payments may be apportioned as a percentage of the amount payable to the participant. Payments to the
20 alternate payee may be limited to a specific amount each month if the number of payments is specified.
21 Payments may not total more than the amount payable to the payee.

22 (6) The duration of monthly or other periodic payments apportioned from a defined benefit or
23 defined contribution plan participant to an alternate payee may not exceed the lifetime of the appropriate
24 participant. The duration of the monthly payments may be further limited only to a specified maximum
25 time, the life of the alternate payee, or the life of another specified participant. The alternate payee's rights
26 and interests survive the alternate payee's death and may be transferred by inheritance.

27 (7) The board shall adopt rules to provide for the application administration of an execution or
28 income-withholding order within the defined contribution plan orders."

29

30 **Section 6.** Section 19-2-1001, MCA, is amended to read:

1 **"19-2-1001. Maximum contribution and benefit limitations.** (1) Employee contributions paid to and
 2 retirement benefits paid from ~~the a retirement systems system or plan~~ may not exceed the annual limits
 3 on contributions and benefits ~~in~~, respectively, allowed by section 415 of the Internal Revenue Code.

4 (2) A member may not receive an annual benefit that exceeds the dollar amount specified in
 5 section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in section 415(b)
 6 of the Internal Revenue Code.

7 (3) Notwithstanding any other provision of law to the contrary, the board may modify a request
 8 by a member to make a contribution to a retirement system or plan if the amount of the contribution would
 9 exceed the limits provided in section 415 of the Internal Revenue Code, by using the following methods:

10 (a) If the ~~retirement system's~~ law requires a lump-sum payment for the purchase of service credit,
 11 the board may establish a periodic payment plan for the member ~~in order~~ to avoid a contribution in excess
 12 of the limits under section 415(c) or 415(n) of the Internal Revenue Code.

13 (b) If payment pursuant to subsection (3)(a) will not avoid a contribution in excess of the limits
 14 imposed by section 415(c) of the Internal Revenue Code, the board shall either reduce the member's
 15 contribution to an amount within the limits of that section or refuse the member's contribution.

16 (4) The limitation year for purposes of section 415 of the Internal Revenue Code is the calendar
 17 year beginning each January 1 and ending December 31.

18 (5) "Salary" or any other similar term used for the purposes of determining compliance with
 19 section 415 of the Internal Revenue Code includes the amount of an elective deferral, as defined in section
 20 402(g) of the Internal Revenue Code, or any other contribution that is contributed or deferred by the
 21 employer at the election of the member and that is not includable in the gross income of the member
 22 because of sections 125, 403(b), or 457 of the Internal Revenue Code."
 23

24 **Section 7.** Section 19-2-1002, MCA, is amended to read:

25 ~~"19-2-1002. (Temporary) Vesting of retirement benefits upon termination of system. Upon~~
 26 ~~termination of a retirement system, termination of employment of a substantial number of members that~~
 27 ~~would constitute a partial termination of the retirement system, or complete discontinuance of~~
 28 ~~contributions to that retirement system, the retirement benefit accrued to each member directly affected~~
 29 ~~by the occurrence becomes fully vested and nonforfeitable to the extent funded.~~

30 **19-2-1002. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Vesting**

1 **of retirement benefits upon termination of plan.** Upon termination of a retirement system or plan,
 2 termination of employment of a substantial number of members that would constitute a partial termination
 3 of the retirement system or plan, or complete discontinuance of contributions to that retirement system
 4 or plan, the retirement benefit accrued to each member directly affected by the occurrence becomes fully
 5 vested and nonforfeitable to the extent funded."

6

7 **Section 8.** Section 19-2-1003, MCA, is amended to read:

8 ~~"19-2-1003. (Temporary) Transfer of dormant, nonvested member-accumulated contributions.~~

9 ~~The board may, in its discretion, transfer the accumulated contributions of a nonvested member to the~~
 10 ~~pension trust fund of the system in which the member is participating if the member has not participated~~
 11 ~~in the plan as an employee for a period of 10 years. Rights of the member may not be jeopardized by the~~
 12 ~~transfer, and the accumulated contributions must be transferred to the member's name upon subsequent~~
 13 ~~return to service or subsequent application for refund.~~

14 **19-2-1003. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Transfer**
 15 **of dormant, nonvested member-accumulated contributions.** The board may, in its discretion, transfer the
 16 accumulated contributions of a nonvested member of a defined benefit system or plan to the pension trust
 17 fund of the system or plan in which the member is participating if the member has not participated in the
 18 system or plan as an employee for a period of 10 years. Rights of the member may not be jeopardized by
 19 the transfer, and the accumulated contributions must be transferred to the member's name upon
 20 subsequent return to service or subsequent application for refund."

21

22 **Section 9.** Section 19-2-1004, MCA, is amended to read:

23 **"19-2-1004. Exemption from taxes and legal process.** Except as provided in 19-2-907 and
 24 19-2-909, the right of a person to any benefit or payment from ~~the a~~ retirement ~~systems~~ system or plan
 25 and the money in the system or plan's pension trust ~~funds~~ fund is not:

26 (1) subject to execution, garnishment, attachment, or any other process;

27 (2) subject to state, county, or municipal taxes except for:

28 (a) a benefit or annuity received in excess of \$3,600 or adjusted by an amount determined
 29 pursuant to 15-30-111(2)(c)(ii); or

30 (b) a refund of a member's regular contributions picked up by an employer after June 30, 1985,

1 as provided in 19-3-315, 19-5-402, 19-6-402, 19-7-403, 19-8-502, 19-9-710, or 19-13-601; or

2 (3) assignable except as specifically provided in this chapter."

3

4 **Section 10.** Section 19-2-1005, MCA, is amended to read:

5 ~~"19-2-1005. (Temporary) Compensation limit.~~ A retirement system subject to this chapter may
6 ~~not take into account compensation of a member in excess of the amount permitted in Internal Revenue~~
7 ~~Code section 401(a)(17).~~

8 **19-2-1005.** ~~(Effective on occurrence of contingency or July 1, 2002, whichever is earlier)~~
9 **Compensation limit.** A retirement system or plan subject to this chapter may not take into account
10 compensation of a member in excess of the amount permitted in Internal Revenue Code section
11 401(a)(17)."

12

13 **Section 11.** Section 19-2-1006, MCA, is amended to read:

14 **"19-2-1006. Use of forfeitures.** A retirement system or plan subject to this chapter may not apply
15 forfeitures of benefits resulting from the member's termination of employment, the death of the member,
16 or any other reason to increase the benefits of any member in a manner not permitted in Internal Revenue
17 Code section 401(a)(8). However, forfeitures may be used to reduce the ~~costs~~ cost of ~~administration of~~
18 administering a retirement system or plan subject to this chapter."

19

20 **Section 12.** Section 19-2-1007, MCA, is amended to read:

21 ~~"19-2-1007. (Temporary) Required distributions.~~ The benefits payable by the retirement systems
22 subject to this chapter are subject to the requirements of section 401(a)(9) of the Internal Revenue Code
23 as follows:

24 (1) ~~Benefits must begin by the later of April 1 of the calendar year following the calendar year in~~
25 ~~which the member reaches 70 1/2 years of age or April 1 of the calendar year following the calendar year~~
26 ~~in which the member terminates employment. If a member fails to apply for retirement benefits by April~~
27 ~~1 of the year following the calendar year in which the member attains age 70 1/2 or April 1st of the year~~
28 ~~following the calendar year in which the member terminates employment, whichever is later, the board~~
29 ~~shall begin distribution of the benefit as required by the retirement system to which the member belongs~~
30 ~~or, subject to subsection (2), as an option 4 benefit in chapters 3, 5, 7, and 8 of this title.~~

1 ~~(2) The member's entire interest in the retirement system must be distributed over the life of the~~
 2 ~~member or the lives of the member and a designated beneficiary, over a period not extending beyond the~~
 3 ~~life expectancy of the member or the life expectancy of the member and designated beneficiary. Death~~
 4 ~~benefits must be distributed in accordance with section 401(a)(9) of the Internal Revenue Code and the~~
 5 ~~regulations implementing that section.~~

6 ~~(3) The life expectancy of a member or the member's beneficiary may not be recalculated after~~
 7 ~~payment of the benefits has begun.~~

8 ~~(4) When a member dies after distribution of benefits has begun, the remaining portion of the~~
 9 ~~member's interest must be distributed beginning within 3 months of notification to the board of the death~~
 10 ~~of the member and, if necessary, the identification of the beneficiary pursuant to 19-2-802 and must be~~
 11 ~~distributed at least as rapidly as under the method of distribution prior to the member's death.~~

12 ~~(5) When a member dies before distribution of benefits has begun, the entire interest of the~~
 13 ~~member must be distributed within 5 years of the member's death. The 5-year payment rule does not~~
 14 ~~apply to any portion of the member's interest that is payable to a designated beneficiary over the life or~~
 15 ~~life expectancy of the beneficiary and that begins within 1 year after the date of the member's death. The~~
 16 ~~5-year payment rule does not apply to any portion of the member's interest that is payable to a surviving~~
 17 ~~spouse, payable over the life or life expectancy of the spouse, and that begins no later than the date the~~
 18 ~~member would have reached 70 1/2 years of age. Distributions to a member's beneficiary must begin as~~
 19 ~~soon as administratively feasible, but must begin no later than December 31 of the calendar year~~
 20 ~~immediately following the calendar year in which the member died. If the beneficiary has not elected the~~
 21 ~~form of payment by that date, payment to the beneficiary must be made in the form of a lifetime monthly~~
 22 ~~benefit payment if the beneficiary is eligible for a monthly benefit or in a lump sum if that is the only~~
 23 ~~benefit payable to the beneficiary.~~

24 ~~(6) The benefits payable must meet the minimum distribution incidental benefit requirements of~~
 25 ~~section 401(a)(9)(G) of the Internal Revenue Code.~~

26 ~~19-2-1007. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier)~~
 27 **Required distributions.** The benefits payable by the a retirement plans system or plan subject to this
 28 chapter are subject to the requirements of section 401(a)(9) of the Internal Revenue Code as follows:

29 (1) Benefits must begin by the later of April 1 of the calendar year following the calendar year in
 30 which the member reaches 70 1/2 years of age or April 1 of the calendar year following the calendar year

1 in which the member terminates employment. If a member fails to apply for retirement benefits by April
2 1 of the year following the calendar year in which the member attains age 70 1/2 or April 1st of the year
3 following the calendar year in which the member terminates employment, whichever is later, the board
4 shall begin distribution of the benefit as required by the retirement system or plan to which the member
5 belongs or, subject to subsection (2), as an option 4 benefit in chapters 3, 5, 7, and 8 of this title.

6 (2) The member's entire interest in a retirement system or plan must be distributed over the life
7 of the member or the lives of the member and a designated beneficiary or over a period not extending
8 beyond the life expectancy of the member or the life expectancy of the member and a designated
9 beneficiary. Death benefits must be distributed in accordance with section 401(a)(9) of the Internal
10 Revenue Code and the regulations implementing that section.

11 (3) The life expectancy of a member or the member's beneficiary may not be recalculated after
12 payment of the benefits has begun.

13 (4) When a member dies after distribution of benefits has begun, the remaining portion of the
14 member's interest must be distributed beginning within 3 months of notification to the board of the death
15 of the member and, if necessary, the identification of the beneficiary pursuant to 19-2-802 and must be
16 distributed at least as rapidly as under the method of distribution prior to the member's death.

17 (5) When a member dies before distribution of benefits has begun, the entire interest of the
18 member must be distributed within 5 years of the member's death. The 5-year payment rule does not
19 apply to any portion of the member's interest that is payable to a designated beneficiary over the life or
20 life expectancy of the beneficiary and that begins within 1 year after the date of the member's death. The
21 5-year payment rule does not apply to any portion of the member's interest that is payable to a surviving
22 spouse, that is payable over the life or life expectancy of the spouse, and that begins no later than the
23 date the member would have reached 70 1/2 years of age. Distributions to a member's beneficiary must
24 begin as soon as administratively feasible, but must begin no later than December 31 of the calendar year
25 immediately following the calendar year in which the member died. If the beneficiary has not elected the
26 form of payment by that date, payment to the beneficiary must be made in the form of a lifetime monthly
27 benefit payment if the beneficiary is eligible for a monthly benefit or in a lump sum if that is the only
28 benefit payable to the beneficiary.

29 (6) The benefits payable must meet the minimum distribution incidental benefit requirements of
30 section 401(a)(9)(G) of the Internal Revenue Code."

1

2 **NEW SECTION. Section 13. Nonapplication of part to defined contribution plan.** Unless otherwise
3 explicitly provided in this part, none of the provisions of this part apply under the defined contribution plan.

4

5 **Section 14.** Section 19-3-2101, MCA, is amended to read:

6 **"19-3-2101. Definitions.** Unless the context requires otherwise, as used in this part, the following
7 definitions apply:

8 (1) "Member" means ~~an employee~~ a person with a retirement account in the defined contribution
9 plan.

10 (2) "Optional retirement program" means the retirement plan established by the board of regents
11 under chapter 21 of this title.

12 (3) "Plan" or "defined contribution plan" means the defined contribution retirement plan."

13

14 **Section 15.** Section 19-3-2102, MCA, is amended to read:

15 **"19-3-2102. (Subsection (1) effective on occurrence of contingency or July 1, 2002, whichever**
16 **is earlier) Defined contribution plan established -- assets to be held in trust -- contracted services.** (1) The
17 board shall establish within the public employees' retirement system a defined contribution plan in
18 accordance with the provisions of this part. The plan must be established as a pension plan for the
19 exclusive benefit of members and their beneficiaries and as a "qualified governmental plan" pursuant to
20 section 401(a) of the Internal Revenue Code and its implementing regulations. Retirement accounts must
21 be established for each member of the defined contribution plan. Assets of the plan must be held in trust.
22 The plan is established in addition to any retirement, pension, deferred compensation, or other benefit plan
23 administered by the state or a political subdivision.

24 (2) The board ~~shall~~ may contract for plan administration and use a competitive bidding process
25 when contracting for consulting, educational, investment, recordkeeping, or other services for the plan.

26 ~~(3) The board shall contract for a qualified consultant to assist in preparation of the request for~~
27 ~~bid or request for proposal for plan services."~~

28

29 **NEW SECTION. Section 16. Limited contract right.** The statutory provisions governing the defined
30 contribution plan and the optional retirement program are subject to amendment by the legislature.

1 Employees choosing the defined contribution plan or the optional retirement program pursuant to this part
2 do not have a contract right to the specific terms and conditions specified in statute on the date the
3 employee's choice becomes effective.

4

5 **Section 17.** Section 19-3-2111, MCA, is amended to read:

6 **"19-3-2111. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Plan**
7 **membership -- written election required -- failure to elect -- effect of election.** (1) Except as otherwise
8 provided in this part:

9 (a) (i) a member who is an active member of the defined benefit plan on the date that the defined
10 contribution plan becomes effective may, within 12 months after that date, elect to transfer to and
11 become a member of the plan;

12 (ii) a member who was an inactive member of the defined benefit plan on the date that the defined
13 contribution plan becomes effective and who is rehired into covered employment after the plan effective
14 date may, within 12 months after the member's rehire date, elect to transfer to and become a member
15 of the plan;

16 (b) a member who is initially hired into covered employment on or after the date that the defined
17 contribution plan becomes effective may, within 12 months of the member's hire date, elect to become
18 a member of the plan.

19 (2) (a) Elections made pursuant to this section must be made on a form prescribed by the board.

20 (b) A member failing to make an election prescribed by this section remains a member of the
21 defined benefit plan.

22 (c) An election under this section, including the default election pursuant to subsection (2)(b), is
23 a one-time irrevocable election. Subject to 19-3-2113, this subsection (2)(c) does not prohibit a new
24 election after an employee has terminated membership in either plan and returned to covered employment.

25 (3) A member in either the defined benefit plan or the defined contribution plan who becomes
26 inactive after an election under this section and who returns to active membership remains in the plan
27 previously elected.

28 (4) A system member may not simultaneously be a member of the defined benefit plan and the
29 defined contribution plan and must be a member of either the defined benefit plan or the defined
30 contribution plan. A period of service may not be credited in more than one retirement plan within the

1 system.

2 (5) The provisions of this part do not prohibit the board from adopting rules to allow an employee
3 to elect the defined contribution plan ~~on~~ FROM the first day of covered employment.

4 (6) A member of the defined benefit plan who is subject to a family law order pursuant to
5 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the
6 defined contribution plan unless the order is modified to apply under the defined contribution plan ~~or, for~~
7 ~~university employees making an election pursuant to 19-3-2112, the optional retirement program."~~

8

9 **Section 18.** Section 19-3-2112, MCA, is amended to read:

10 **"19-3-2112. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Plan**
11 **choices for members employed by university system -- amount available to transfer -- effect on rights. (1)**

12 If an employee of the Montana university system, ~~as provided for in 20-1-101,~~ is eligible to make an
13 election under this part to transfer to the defined contribution plan, the employee may, instead of electing
14 the defined contribution plan, ~~make a one-time irrevocable election on a form prescribed by the board~~ elect
15 to transfer membership to the university system's optional retirement program provided for under chapter
16 21 of this title.

17 (2) Except as otherwise provided in this part, an election to transfer to the optional retirement
18 program must be made in accordance with the following provisions:

19 (a) (i) A university employee who is an active member of the defined benefit plan on the effective
20 date of the defined contribution plan may, within 12 months after that date, elect to transfer to and
21 become a member of the optional retirement program.

22 (ii) A university employee who was an inactive member of the defined benefit plan on the effective
23 date of the defined contribution plan and who is hired or rehired into covered employment with the
24 university system after that date may, within 12 months after the member's hire or rehire date, elect to
25 transfer to and become a member of the optional retirement program.

26 (iii) An employee who is initially hired into covered employment with the university system on or
27 after the effective date of the defined contribution plan may, within 12 months of the member's hire date,
28 elect to become a member of the optional retirement program.

29 (b) Elections made pursuant to this section must be made on a form prescribed by the board.

30 (c) A member failing to make an election prescribed by this section remains a member of the

1 defined benefit plan.

2 (d) An election under this section, including the default election pursuant to subsection (2)(c), is
 3 a one-time irrevocable election. Subject to 19-3-2113, this subsection (2)(d) does not prohibit a new
 4 election after an employee has terminated membership in the optional retirement program and returned to
 5 employment in a position covered under the system.

6 (e) A member in either the defined benefit plan or the optional retirement program who becomes
 7 inactive after an election under this section and who returns to active membership remains in the plan
 8 previously elected.

9 (f) A university employee in a position covered under the system may not simultaneously be a
 10 member of more than one retirement plan under this title, but must be a member of the defined benefit
 11 plan, the defined contribution plan, or the optional retirement program as provided by applicable provisions
 12 of this title. The same period of service may not be credited in more than one retirement system or plan.

13 (g) The provisions of this part do not prohibit the board from adopting rules to allow an eligible
 14 employee to elect the optional retirement program on FROM the first day of covered employment.

15 (h) A member of the defined benefit plan who is subject to a family law order pursuant to
 16 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the
 17 optional retirement program unless the order is modified to apply under the optional retirement program.

18 ~~(2)~~(3) For an employee electing to transfer to the optional retirement program, the board shall
 19 transfer to the optional retirement program the amount that the employee would have been able to transfer
 20 to the defined contribution plan under 19-3-2114.

21 ~~(3)~~(4) An election to become a member of the optional retirement program pursuant to this section
 22 is a waiver of all rights and benefits under the public employees' retirement system."
 23

24 **Section 19.** Section 19-3-2113, MCA, is amended to read:

25 **"19-3-2113. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier)**
 26 **Reinstatement of plan membership -- purchase of prior service in defined benefit plan.** (1) (a) ~~An employee~~
 27 A participant who ~~terminated~~ terminates membership in the defined benefit plan, the defined contribution
 28 plan, or the optional retirement program after making an election pursuant to 19-3-2111 or 19-3-2112 and
 29 who returns to covered employment ~~after a break in service of~~ in less than 24 ~~consecutive~~ months shall
 30 become a member of the plan that the member last selected and is not eligible for a new plan choice

1 election.

2 (b) ~~Except as provided in subsection (2), an employee~~ A participant who terminated membership
3 in either the defined benefit plan, the defined contribution plan, or the optional retirement program after
4 making an election pursuant to 19-3-2111 or 19-3-2112 and who returns to covered employment after
5 ~~a break in service of 24 consecutive months or more~~ is eligible to make a plan choice election as if the
6 ~~employee were~~ though initially hired as provided for in 19-3-2111(1)(b).

7 ~~(2) (a) An employee who returns to covered employment after terminating plan membership in the~~
8 ~~defined contribution plan or the optional retirement program shall return to the plan previously selected if~~
9 ~~the employee has accessed money derived from the employee's former retirement account by:~~

10 ~~(i) receiving a lump-sum distribution of the member's former retirement account, unless the~~
11 ~~distribution was forced pursuant to 19-3-2126(1)(b);~~

12 ~~(ii) receiving a lump-sum distribution from an account outside the defined contribution plan that~~
13 ~~has at any time received a transfer of funds from the member's former retirement account or any account~~
14 ~~to which the member has transferred funds from a former retirement account; or~~

15 ~~(iii) receiving a regular benefit, payment, or distribution from an account outside the defined~~
16 ~~contribution plan in which there is money from the member's former retirement account.~~

17 ~~(b) For the purposes of this subsection (2), "retirement account" also includes an employee's~~
18 ~~account under the optional retirement program.~~

19 ~~(3)(2)~~ (a) An employee who returns to covered employment after terminating membership in the
20 defined benefit plan, who is eligible to make a plan choice, and who elects to join the defined benefit plan
21 may reinstate prior membership service as provided in 19-2-603.

22 (b) An employee who returns to covered employment after terminating membership in the defined
23 contribution plan or the optional retirement program, who is eligible to make a plan choice, and who elects
24 to join the defined benefit plan may purchase prior membership service by paying to the board the full
25 actuarial cost of the service as of the latest actuarial valuation of the defined benefit plan. The employee
26 may not purchase membership service under this section in excess of the employee's length of service as
27 a member of the defined contribution plan or the optional retirement program."

28

29 **Section 20.** Section 19-3-2114, MCA, is amended to read:

30 **"19-3-2114. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier)**

1 **Amount available to transfer.** (1) (a) For an employee who was a system member on the day before the
 2 effective date of the defined contribution plan and who elects to transfer to the plan, the board shall
 3 transfer from the defined benefit plan to the member's retirement account the employee's contributions
 4 and the percentage of the employer's contributions specified in subsection (1)(b), plus 8% compounded
 5 annual interest on the total of the transferred employee and employer contributions.

6 (b) Based on the contribution amount historically available to pay unfunded liabilities in the defined
 7 benefit plan and the transferring member's years of service, the percentage of the employer contributions
 8 that may be transferred are as follows:

9 Years of service	Percentage of employer
	10 contributions available to transfer
11 Less than 5 years	65.53%
12 5 to 9 years	58.59%
13 10 to 14 years	55.26%
14 15 to 19 years	55.42%
15 20 or more years	57.53%

16 (2) For an employee hired on or after the effective date of the defined contribution plan who elects
 17 to become a member of the plan, the board shall transfer from the defined benefit plan to the member's
 18 retirement account an amount equal to the amount that would have been credited to the member's
 19 account pursuant to 19-3-2117 had the employee become a plan member on the employee's hire date,
 20 plus 8% compounded annual interest ~~credited at the actuarially assumed rate of return on the defined~~
 21 ~~benefit plan assets as of the plan's latest actuarial valuation."~~

22

23 **Section 21.** Section 19-3-2115, MCA, is amended to read:

24 **"19-3-2115. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier)**
 25 **Transfers or rollovers into plan -- service transfers -- membership credit for purposes of vesting.** (1) (a)
 26 Except as provided in subsection (2), the board shall accept the ~~transfer or rollover of assets~~ contributions
 27 and the income on those contributions from another qualified plan to the member's ~~retirement~~ vested
 28 account. ~~If a member is transferring assets from another plan provided for in this title, the member must,~~
 29 ~~for the purposes of becoming vested pursuant to 19-3-2116, receive credit for the employee's prior~~
 30 ~~membership service under that plan.~~

1 (b) To transfer service from another retirement system in this title, an employee must first become
 2 BE a member of the defined benefit plan. The member must receive membership service and service credit
 3 for the service the member transfers. The transferring member may, within 12 months after joining the
 4 defined benefit plan, elect to become a member of the defined contribution plan. The transferred service
 5 may be used for purposes of vesting in the defined contribution plan pursuant to 19-3-2116.

6 (2) (a) After-tax money may not be transferred or rolled over to a retirement account unless the
 7 money was contributed to the system's defined benefit plan on an after-tax basis.

8 (b) To the extent that the transfer or rollover is disallowed under the Internal Revenue Code
 9 provisions in effect as of the calendar year immediately preceding the date of the transfer or rollover, a
 10 member may not transfer or rollover to a retirement account contributions made under sections 403(b) and
 11 457 of the Internal Revenue Code."

12

13 **Section 22.** Section 19-3-2116, MCA, is amended to read:

14 **"19-3-2116. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier)**
 15 **Vesting -- mandatory termination of membership -- forfeitures.** (1) A member is fully vested with the
 16 member's contributions and the income on those contributions from the date that the employee becomes
 17 a member of the plan, but is not considered a vested member, ~~as defined in 19-2-303,~~ unless the member
 18 meets the criteria under subsection (2).

19 (2) A member is not vested with the employer's contributions and the income on those
 20 contributions and does not attain the status of a vested member until the member has a total of ~~5 years~~
 21 ~~1 YEAR~~ 5 YEARS of membership service under the system.

22 (3) A member who terminates covered employment before becoming a vested member shall
 23 terminate plan membership by removing from the plan the member's entire vested account balance as
 24 provided in 19-3-2123. The employer contributions and income on the employer's contributions in the
 25 member's retirement account are forfeited and must be allocated as provided in 19-3-2117."

26

27 **Section 23.** Section 19-3-2117, MCA, is amended to read:

28 **"19-3-2117. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier)**
 29 **Allocation of contributions and forfeitures.** (1) Each plan member's retirement account must be credited
 30 with the employee contributions made under 19-3-315.

1 (2) Subject to adjustment by the board as provided in 19-3-2121, beginning on the plan's effective
2 date, of the employer contributions under 19-3-316, an amount equal to:

3 (a) 4.49% of compensation must be allocated to the member's retirement account; ~~and~~

4 (b) 2.37% of compensation must be allocated to the defined benefit plan as the plan choice rate;
5 and

6 (c) 0.04% of compensation must be allocated to the education fund as provided in 19-3-112(1)(c).

7 (3) Forfeitures of employer contributions and investment income on the employer contributions
8 may not be used to increase a member's retirement account. The board shall allocate the forfeitures under
9 19-3-2116 to meet the ~~employer contributions obligation provided under subsection (2)(a) of this section~~
10 ~~in lieu of direct contributions by the employer and shall increase the contribution amount under subsection~~
11 ~~(2)(b) of this section by the amount of the forfeitures used in lieu of the employer contributions~~ plan's
12 administrative expenses including startup expenses."

13

14 **Section 24.** Section 19-3-2121, MCA, is amended to read:

15 **"19-3-2121. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier)**

16 **Determination and adjustment of plan choice rate and contribution allocations** ~~--rulemaking.~~ (1) The board
17 shall ~~provide for the periodic~~ periodically review of the sufficiency of the plan choice rate and shall adjust
18 the allocation of contributions under 19-3-2117 as specified in this section. The board shall ~~provide that~~
19 collect and maintain the data necessary to comply with this section ~~is collected and maintained for all~~
20 ~~system members.~~

21 (2) The plan choice rate set in 19-3-2117(2)(b) must be adjusted as provided in this section, taking
22 into account:

23 (a) as determined under subsection (3), the change in the normal cost contribution rate in the
24 defined benefit plan that is the result of member selection of the defined contribution plan; and

25 ~~(b) as determined under subsection (4), the anticipated reduction in defined contribution plan costs~~
26 ~~because of forfeitures; and~~

27 ~~(c)(b)~~ (b) as determined under subsection ~~(5)~~ (4), the sufficiency of the plan choice rate to actuarially
28 fund the defined contribution plan's share of the defined benefit plan's unfunded liabilities.

29 (3) The change in the normal cost contribution rate must be an amount equal to the difference
30 between the normal cost contribution rate in the defined benefit plan that would have resulted if all system

1 members remained in the defined benefit plan and the normal cost contribution rate in the defined benefit
 2 plan for the actual members of the defined benefit plan, multiplied by the covered payroll of members in
 3 the defined benefit plan, divided by the covered payroll of members in the defined contribution plan. The
 4 measurements under this subsection must be based on the defined benefit plan in effect on the effective
 5 date of the defined contribution plan until the board determines that the defined benefit plan has been
 6 amended in a manner that significantly affects plan choices available to system members. After a board
 7 determination that the defined benefit plan has been significantly changed, the measurements in this
 8 subsection with respect to members entering the system after the significant change must be made on
 9 the basis of the defined benefit plan, as amended.

10 ~~(4) The anticipated reduction in defined contribution plan costs as a result of forfeitures under~~
 11 ~~19-3-2116 must be determined as the amount of forfeitures expected during the next biennium based on~~
 12 ~~actual forfeitures in the preceding biennium, adjusted by taking into account the gains or losses during the~~
 13 ~~preceding biennium resulting from forfeitures of greater or lesser amounts than expected, divided by twice~~
 14 ~~the covered payroll of members of the defined contribution plan.~~

15 ~~(5)~~(4) The sufficiency of the plan choice rate to actuarially fund the appropriate share of the
 16 defined benefit plan's unfunded liabilities must be determined as follows:

17 (a) The board shall determine the number of years required to actuarially fund the defined benefit
 18 plan's unfunded liabilities as of the June 30, 1998, actuarial valuation, which must be the initial schedule
 19 for the defined contribution plan to actuarially fund the plan's share of the unfunded liabilities. The board
 20 shall reduce the schedule by 1 year each biennium.

21 (b) During each subsequent actuarial valuation of the defined benefit plan conducted pursuant to
 22 19-2-405, the board shall determine whether the plan choice rate minus the ~~sum of the amounts~~ amount
 23 provided in ~~subsections subsection (2)(a) and (2)(b)~~ subsection (2)(a) and (2)(b) of this section is sufficient to pay the unfunded liability
 24 obligations within the schedule determined under subsection ~~(5)(a)~~ (4)(a) of this section. If the amount is
 25 insufficient to fund the liability over a period of 10 years longer than the scheduled period or is more than
 26 sufficient to fund the liability over a period of 10 years earlier than the scheduled period, the board shall
 27 determine to the nearest 0.1% the amount of the increase or decrease in the plan choice rate that is
 28 required to actuarially fund the liabilities according to the established schedule.

29 ~~(6)~~(5) If the board determines that the plan choice rate should be increased or decreased, the plan
 30 choice rate under 19-3-2117(2)(b) must be increased or decreased accordingly. If the plan choice rate is

1 increased, the allocation of employer contributions to member accounts under 19-3-2117(2)(a) must be
 2 decreased by that amount. If the plan choice rate is decreased, the allocation of employer contributions
 3 to member accounts under 19-3-2117(2)(b)(2)(a) must be increased by that amount.

4 ~~(7)(6)~~ By November 1 of the year of a determination pursuant to this section that the allocation
 5 of employer contributions under 19-3-2117(2) must be changed, the board shall notify system members,
 6 participating employers, employee and employer organizations, the governor, and the legislature of its
 7 determination and of the changes required.

8 ~~(8)(7)~~ Effective January 1 of the year after the regular legislative session that immediately follows
 9 a determination under this section, the plan choice rate and the allocation of contributions under
 10 19-3-2117(2) must be adjusted according to the board's determination."

11

12 **Section 25.** Section 19-3-2122, MCA, is amended to read:

13 **"19-3-2122. (Subsections (4) through (6) effective on occurrence of contingency or July 1, 2002,**
 14 **whichever is earlier) Investment alternatives -- notice of changes -- default fund.** (1) The board shall
 15 ~~contract with a vendor or vendors to~~ provide for at least eight investment alternatives within the defined
 16 contribution plan. In providing for the plan's investment alternatives, only a vendor or vendors offering
 17 suitable and well-managed investments, licensed to conduct business in Montana, and regulated by the
 18 United States securities and exchange commission may be used, unless exempt from the commission's
 19 regulation.

20 (2) The investment alternatives must include at least three that offer plan members the following:

21 (a) the ability to materially affect the potential return on amounts in the member's retirement
 22 account and the degree of risk to which those amounts are subject;

23 (b) a range of investment alternatives that:

24 (i) provides sound and diversified funds;

25 (ii) offers, under each alternative, a materially different risk and return characteristic than found
 26 in the other alternatives;

27 (iii) allows the member or beneficiary to choose among them to achieve a portfolio with an
 28 aggregate risk and return characteristic to achieve a point within the risk and return range normally
 29 appropriate for the member or beneficiary based on age, income, and individual retirement goals; and

30 (iv) tends to minimize through diversification the overall risk of large losses.

1 (3) ~~Subject to a competitive bidding process, the~~ The investment alternatives may include the
 2 investment alternatives offered to members of the state deferred compensation plan pursuant to chapter
 3 50 of this title.

4 (4) The board shall from time to time review the suitability and management of investment
 5 alternatives and may change the alternatives to be offered. The board shall notify affected members of
 6 potential changes before any changes become effective.

7 (5) Assets within each member's retirement account must be invested as directed by the member.

8 (6) The board shall provide for a balanced fund to be established as a default investment fund.
 9 In the case of a member failing to direct how the member's retirement account is to be invested, the
 10 member's entire account ~~balance~~ must be invested in the default fund.

11 (7) This section does not prohibit the board from contracting with the board of investments
 12 established in 2-15-1808 to provide one or more investment alternatives within the plan."

13

14 **Section 26.** Section 19-3-2123, MCA, is amended to read:

15 **"19-3-2123. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Payout**
 16 **of vested account balances when terminating plan membership.** Any time after termination of ~~covered~~
 17 ~~employment~~ service, a member or the member's beneficiary may terminate plan membership by ~~making~~
 18 filing a written application ~~to~~ with the board and removing the member's vested account balance from the
 19 plan through any combination of the following payout options, each of which is subject to applicable
 20 regulations of the internal revenue service:

21 (1) a direct rollover to an eligible retirement plan or to an individual retirement account or annuity
 22 pursuant to section 401(a)(31) of the Internal Revenue Code;

23 (2) a regular rollover to an eligible retirement plan pursuant to section 402(c) of the Internal
 24 Revenue Code; or

25 (3) a lump-sum distribution of the member's vested account balance."

26

27 **Section 27.** Section 19-3-2124, MCA, is amended to read:

28 **"19-3-2124. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier)**
 29 **Distribution options for plan members -- rulemaking -- minimum distribution requirements -- restrictions.**

30 (1) Subject to 19-3-2116 and 19-3-2126, a member may, after termination of ~~covered employment~~

1 service, leave the member's vested account balance in the plan, and the member is eligible for a
 2 distribution as provided in this section.

3 (2) After termination of ~~covered employment~~, service and upon filing a written application ~~to~~ with
 4 the board, a member may, if provided for by the board, select a distribution option offered pursuant to a
 5 contract negotiated by the board with a plan vendor or vendors.

6 (3) A member who is less than 70 1/2 years of age who returns to ~~covered employment~~ service
 7 may not continue to receive a distribution under this section while actively employed in a covered position.

8 (4) The board shall adopt rules to administer this section and to provide that distributions comply
 9 with the minimum distribution requirements established in the Internal Revenue Code and applicable under
 10 19-2-1007."

11

12 **Section 28.** Section 19-3-2125, MCA, is amended to read:

13 **"19-3-2125. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Death**
 14 **benefits.** A plan member's beneficiary must be determined as provided in chapter 2, part 8, of this title.
 15 Upon filing a written application ~~filed~~ with the board after the death of a plan member, the member's
 16 beneficiary is entitled to the member's vested account balance ~~and all rights established in and~~ subject to
 17 this part."

18

19 **Section 29.** Section 19-3-2126, MCA, is amended to read:

20 **"19-3-2126. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier)**
 21 **Minimum Refunds -- minimum account balance required for membership after termination -- adjustment**
 22 **by rule.** (1) ~~(a) If a member's account balance is less than \$5,000 at the time that the member terminates~~
 23 ~~covered employment, the member shall terminate plan membership by removing the member's account~~
 24 ~~balance from the plan in a manner provided pursuant to 19-3-2123.~~

25 ~~(b) If the member fails to remove the member's account balance, the board may close the account~~
 26 ~~by paying to the member a lump-sum distribution of the member's entire account balance. Before~~
 27 termination of service, a member may not receive a refund of any portion of the member's vested account.

28 (2) A nonvested member who terminates from service and whose vested account balance is less
 29 than \$200 must be paid the vested account balance in a lump sum. The payment must be made as soon
 30 as administratively feasible after the member's termination without a written application from the member.

1 (3) Unless a written application is made pursuant to subsection (4)(a), a nonvested member who
 2 terminates from service and whose vested account balance is between \$200 and \$5,000 must be paid
 3 the vested account balance in a lump sum. The payment must be made as soon as administratively feasible
 4 after the member's termination.

5 (4) (a) Upon the written application of a terminating member whose vested account balance is
 6 \$200 or more, the board shall make a direct rollover distribution pursuant to section 401(a)(31) of the
 7 Internal Revenue Code of the eligible portion of that balance. To receive the direct rollover distribution, the
 8 member is responsible for correctly designating, on forms provided by the board, a retirement plan that
 9 allows the rollover and is qualified under applicable federal law.

10 (b) The direct rollover distribution must be paid directly to the qualified retirement plan. The
 11 amount of the member's vested account balance not eligible for a direct rollover distribution must be paid
 12 to the member in a lump sum.

13 ~~(2)~~(5) The board may by rule adjust the minimum account balance provided in this section as
 14 necessary to maintain reasonable administrative costs and to account for inflation."

15

16 **Section 30.** Section 19-3-2133, MCA, is amended to read:

17 **"19-3-2133. Creation of employee investment advisory council.** The board shall, by August 1,
 18 1999, ~~appoint~~ create an employee investment advisory council. The advisory council shall meet at least
 19 quarterly to:

20 (1) advise the board concerning the establishment and operation of the defined contribution plan,
 21 including the selection of the initial investment alternatives to be provided pursuant to 19-3-2122;

22 (2) advise the board about negotiating, contracting, or modifying services for the state deferred
 23 compensation plan provided for in chapter 50; and

24 (3) review existing deferred compensation plans and to advise the board on the administration of
 25 the program."

26

27 **Section 31.** Section 19-21-101, MCA, is amended to read:

28 **"19-21-101. Authority to establish optional retirement program.** The board of regents may
 29 establish an optional retirement program, as provided in this chapter, for the administrative officers and
 30 members of the instructional and scientific staff of the Montana university system. The program may be

1 an independent plan or part of a larger plan with respect to some or all of the benefits provided. The
 2 benefits under the program must be provided through individual annuity contracts, either fixed or variable,
 3 or a combination ~~thereof~~ of contracts, issued to and owned by the participants in the program. The
 4 program must comply with applicable sections of the Internal Revenue Code."

5

6 **Section 32.** Section 19-21-103, MCA, is amended to read:

7 **"19-21-103. Duties of board of regents.** The board of regents shall:

8 (1) act as fiduciaries of the program and exercise its fiduciary authority in the same manner that
 9 would be used by a prudent person acting in the same capacity who is familiar with the circumstances and
 10 in an enterprise of a similar character with similar aims;

11 (2) provide for the administration of the program;

12 ~~(2)~~(3) designate the company or companies from which the contracts are to be purchased and
 13 approve the form and content of the contracts, taking into consideration the:

14 (a) nature and extent of the rights and benefits to be provided by the contracts for participants
 15 and their beneficiaries;

16 (b) relationship of these rights and benefits to the amount of contributions to be made;

17 (c) suitability of these rights and benefits to the needs of the participants and the interests of the
 18 Montana university system in the recruitment and retention of administrative officers and members of the
 19 instructional and scientific staff; and

20 (d) ability of the designated company or companies to provide these rights and benefits."

21

22 **Section 33.** Section 19-21-201, MCA, is amended to read:

23 **"19-21-201. (Temporary) Participation in program.** (1) Except as provided in subsection (2),
 24 academic and professional administrative personnel with individual contracts under the authority of the
 25 board of regents are eligible for and may elect to participate in the optional retirement program instead of
 26 the teachers' retirement system. This election must be exercised:

27 (a) before January 1, 1988, for an eligible person hired before July 1, 1987;

28 (b) within 90 days after entry into service or before January 1, 1988, whichever is later, for a
 29 person hired in an eligible position on or after July 1, 1987; and

30 (c) within 30 days after receiving written notice of eligibility or before January 1, 1988, whichever

1 is later, for an employee who becomes eligible to participate in the optional retirement program by reason
2 of appointment, promotion, transfer, or reclassification to an eligible position.

3 (2) (a) An eligible person hired on or after July 1, 1993, shall become a member of the optional
4 retirement plan unless the person is, on the date hired, an active, inactive, or retired member of a public
5 retirement system created in Title 19, chapter 3 or 20.

6 (b) A person hired who is a member of a public retirement system created in Title 19, chapter 3
7 or 20, shall elect to:

8 (i) remain with the retirement system of which the person is a member on the date hired; or

9 (ii) become a member of the optional retirement plan.

10 (c) A person eligible to make an election under this subsection (2) shall exercise the election within
11 30 days of being hired.

12 (3) The election must be exercised by filing a written notice with the teachers' retirement system
13 and the disbursing officer of the employer. The election is effective as of the date the notice is filed or
14 January 1, 1988, whichever is later.

15 (4) If an eligible officer or staff member fails to exercise the election, as provided by this section,
16 that person must remain or become a member of the teachers' retirement system.

17 (5) An election under this section is not effective unless the notice filed with the disbursing officer
18 of the employer is accompanied by an appropriate application, if one is required, for the issuance of a
19 contract or contracts under the program.

20 **19-21-201. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier)**
21 **Participation in program.** (1) Except as provided in subsection (2), academic and professional administrative
22 personnel with individual contracts under the authority of the board of regents are eligible for and may
23 elect to participate in the program instead of the teachers' retirement system. This election must be
24 exercised:

25 (a) before January 1, 1988, for an eligible person hired before July 1, 1987;

26 (b) within 90 days after entry into service or before January 1, 1988, whichever is later, for a
27 person hired in an eligible position on or after July 1, 1987; and

28 (c) within 30 days after receiving written notice of eligibility or before January 1, 1988, whichever
29 is later, for an employee who becomes eligible to participate in the program by reason of appointment,
30 promotion, transfer, or reclassification to an eligible position.

1 (2) (a) An eligible person hired on or after July 1, 1993, shall become a member of the program
 2 unless the person is, on the date hired, an active, inactive, or retired member of a public retirement system
 3 created in Title 19, chapter 3 or 20.

4 (b) An eligible person hired who is a member of a public retirement system created in Title 19,
 5 chapter 3 or 20, shall elect to:

6 (i) remain with the retirement system of which the person is a member on the date hired; or

7 (ii) become a member of the program.

8 (c) A person eligible to make an election under this subsection (2) shall exercise the election within
 9 30 days of being hired.

10 (d) A person is ineligible to make an election under subsection (1) or (2) if the person previously
 11 elected to remain in the teachers' retirement system pursuant to subsection (1) or to remain in the public
 12 employees' retirement system pursuant to this subsection (2).

13 (3) The election must be exercised by filing a written irrevocable election with the teachers'
 14 retirement system and the disbursing officer of the employer. The election is effective as of the date the
 15 notice is filed or January 1, 1988, whichever is later.

16 (4) If an eligible officer or staff member fails to exercise the election, as provided by this section,
 17 that person shall remain or become a member of the teachers' retirement system.

18 (5) An election under this section is not effective unless the notice filed with the disbursing officer
 19 of the employer is accompanied by an appropriate application, if one is required, for the issuance of a
 20 contract or contracts under the program.

21 ~~(6) Subject to and as provided in 19-3-2112, a university system employee in a position covered~~
 22 ~~under the public employees' retirement system may elect to participate in the program."~~

23

24 **NEW SECTION. Section 34. Participation by employees in positions covered by public employees'**
 25 **retirement system.** Subject to and as provided in 19-3-2112, a university system employee in a position
 26 covered under the public employees' retirement system may elect to participate in the program.

27

28 **Section 35.** Section 19-21-202, MCA, is amended to read:

29 **"19-21-202. (Temporary) Effect on rights under teachers' retirement system.** (1) An election under
 30 ~~19-21-201 to participate in the optional retirement program is a waiver of all rights and benefits under the~~

1 ~~teachers' retirement system except as provided in this section.~~

2 ~~(2) A member of the teachers' retirement system who elects to participate in the optional~~
 3 ~~retirement program is considered, for the purpose of determining eligibility for rights and benefits under~~
 4 ~~that system, to be no longer employed in a capacity that allows active membership in that system as of~~
 5 ~~the effective date of the election. Thereafter, the member is considered an inactive member of the~~
 6 ~~retirement system if qualified under 19-20-303, with the rights and privileges provided under~~
 7 ~~19-20-603(1). A member who elects to participate in the optional retirement program who does not qualify~~
 8 ~~as an inactive member under 19-20-303 is considered a terminated member of the retirement system~~
 9 ~~under 19-20-304(4).~~

10 ~~(3) A person who elects to participate in the optional retirement program is ineligible to be an~~
 11 ~~active member of the teachers' retirement system while continuously employed in a position eligible to~~
 12 ~~participate in the optional retirement program.~~

13 **19-21-202. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier) Effect**
 14 **on rights under teachers' retirement system.** (1) An election under 19-21-201~~(1)~~ through ~~(3)~~ and ~~(5)~~ to
 15 participate in the program is a waiver of all rights and benefits under the teachers' retirement system
 16 except as provided in this section.

17 (2) A member of the teachers' retirement system who elects to participate in the program is
 18 considered, for the purpose of determining eligibility for rights and benefits under that system, to be no
 19 longer employed in a capacity that allows active membership in that system as of the effective date of the
 20 election. Thereafter, the member is considered an inactive member of the system if qualified under
 21 19-20-303, with the rights and privileges provided under 19-20-603(1). A member who elects to
 22 participate in the program who does not qualify as an inactive member under 19-20-303 is considered a
 23 terminated member of the system under 19-20-304(4).

24 (3) A person who elects to participate in the program is ineligible to be an active member of the
 25 teachers' retirement system while continuously employed in a position eligible to participate in the
 26 program."

27

28 **Section 36.** Section 19-21-203, MCA, is amended to read:

29 **"19-21-203. (Temporary) Contributions.** (1) Each optional retirement program participant shall
 30 contribute an amount equal to the member's contribution required under 19-20-602. The board of regents

1 shall contribute an amount that, when added to the participant's contribution, is equal to 12% of the
2 participant's earned compensation.

3 (2) (a) On or after July 1, 1997, the board of regents may:

4 (i) reduce the participant's contribution rate established in subsection (1) to an amount not less
5 than 6% of the participant's earned compensation; and

6 (ii) increase the employer's contribution rate to an amount not greater than 6% of the participant's
7 earned compensation.

8 (b) The sum of the participant's and employer's contributions made under subsection (2)(a) must
9 remain at 12% of the participant's earned compensation.

10 (3) The board of regents shall determine whether the participant's contribution is to be made by
11 salary reduction under section 403(b) of the Internal Revenue Code of 1954 or by employer pick-up under
12 section 414(h)(2) of that code.

13 (4) The disbursing officer of the employer or other official designated by the board of regents shall
14 pay both the participant's contribution and the appropriate portion of the regents' contribution to the
15 designated company or companies for the benefit of the participant.

16 (5) The board of regents shall make the supplemental contributions to the teachers' retirement
17 system as provided in 19-20-621 to discharge the obligation incurred by the Montana university system
18 for the past service liability incurred by active, inactive, and retired members of the teachers' retirement
19 system.

20 **19-21-203. (Effective on occurrence of contingency or July 1, 2002, whichever is earlier)**
21 **Contributions -- supplemental and plan choice rate contributions.** The following provisions apply to
22 program participants not otherwise covered under [section 37]:

23 (1) Each program participant shall contribute an amount equal to the member's contribution
24 required under 19-20-602. The board of regents shall contribute an amount that, when added to the
25 participant's contribution, is equal to 12% of the participant's earned compensation.

26 (2) (a) The board of regents may:

27 (i) reduce the participant's contribution rate established in subsection (1) to an amount not less
28 than 6% of the participant's earned compensation; and

29 (ii) increase the employer's contribution rate to an amount not greater than 6% of the participant's
30 earned compensation.

1 (b) The sum of the participant's and employer's contributions made under subsection (2)(a) must
2 remain at 12% of the participant's earned compensation.

3 (3) The board of regents shall determine whether the participant's contribution is to be made by
4 salary reduction under section 403(b) of the Internal Revenue Code of 1954 or by employer pickup under
5 section 414(h)(2) of that code.

6 (4) The disbursing officer of the employer or other official designated by the board of regents shall
7 pay both the participant's contribution and the appropriate portion of the board of regents' contribution
8 to the designated company or companies for the benefit of the participant.

9 (5) ~~(a)~~ The board of regents shall make the supplemental contributions to the teachers' retirement
10 system, as provided in 19-20-621, to discharge the obligation incurred by the Montana university system
11 for the past service liability incurred by active, inactive, and retired members of the teachers' retirement
12 system.

13 ~~(b) For employees electing to become program members pursuant to 19-3-2112, the board of~~
14 ~~regents shall, in addition to other contributions required under this section, contribute to the public~~
15 ~~employees' retirement system the plan choice rate provided in 19-3-2117(2)(b) and adjusted pursuant to~~
16 ~~19-3-2121."~~

17

18 **NEW SECTION. Section 37. Contributions and allocations for employees in positions covered**
19 **under the public employees' retirement system.** (1) The contribution rates for employees in positions
20 covered under the public employees' retirement system who elect to become program members pursuant
21 to 19-3-2112 are as follows:

22 (a) the member's contribution rate must be the rate provided in 19-3-315; and

23 (b) the employer's contribution rate must be the rate provided in 19-3-316.

24 (2) Subject to subsection (3), the employer's contribution under subsection (1)(b) must be
25 allocated as follows:

26 (a) 4.49% of compensation must be allocated to the participant's program account;

27 (b) 2.37% of compensation must be allocated to the defined benefit plan under the public
28 employees' retirement system as the plan choice rate; and

29 (c) 0.04% of compensation must be allocated to the education fund pursuant to 19-3-112(1)(c).

30 (3) The allocations under subsection (2) are subject to adjustment by the public employees'

1 retirement board, but only as described in and in a manner consistent with the express provisions of
2 19-3-2121.

3

4 **Section 38.** Section 79, Chapter 471, Laws of 1999, is amended to read:

5 "**Section 79. Effective Dates.** (1) Except as provided in subsections (2) through ~~(4)~~ (5), [this act]
6 is effective October 1, 1999.

7 (2) [Sections 3, 11, 20 through 22, 43(2) and (3), 44, 45, 55(1) through (3) and (7), 60, 61, 64,
8 65, 72, 75 through 78, 80, and 81 and this section] are effective on passage and approval.

9 (3) [Sections 34, 41(1)(a), (1)(b), and (2) through (6), 46, 62, 63, and 66 through 71, 73, and 74]
10 are effective July 1, 1999.

11 (4) [Sections 2, ~~4~~ 5, 8 through 10, 12 through 19, 23 ~~through~~, 29, 31 through 33, 35 through
12 37, 39, 40, 41(1)(c), 43(1), 47 through 54, 55(4) through (6), and 56 through 59] are effective
13 contingent upon certification, as provided in [section 65], that the defined contribution retirement plan is
14 ready to become operational or on July 1, 2002, whichever is earlier.

15 (5) [Sections 4, 6, 7, 24 through 28, 30, and 38] are effective July 1, 2001."

16

17 **Section 39.** Section 81, Chapter 471, Laws of 1999, is amended to read:

18 "**Section 81. Termination.** (1) [Sections ~~41(1)(b)~~, 61, and 63] terminate July 1, 2001.

19 (2) [~~Section~~ Sections 41(1)(b) and 60] ~~terminates~~ terminate July 1, 2002."

20

21 NEW SECTION. **Section 40. Codification instruction.** (1) [Section 3] is intended to be codified as
22 an integral part of Title 19, chapter 2, part 5, and the provisions of Title 19, chapter 2, part 5, apply to
23 [section 3].

24 (2) [Section 13] is intended to be codified as an integral part of Title 19, chapter 3, part 16, and
25 the provisions of Title 19, chapter 3, part 16, apply to [section 13].

26 (3) [Section 16] is intended to be codified as an integral part of Title 19, chapter 3, part 21, and
27 the provisions of Title 19, chapter 3, part 21, apply to [section 16].

28 (4) [Sections 34 and 37] are intended to be codified as an integral part of Title 19, chapter 21,
29 part 2, and the provisions of Title 19, chapter 21, part 2, apply to [section 34 and 37].

30

1 NEW SECTION. **Section 41. Saving clause.** [This act] does not affect rights and duties that
2 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
3 act].

4

5 NEW SECTION. **Section 42. Severability.** If a part of [this act] is invalid, all valid parts that are
6 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
7 applications, the part remains in effect in all valid applications that are severable from the invalid
8 applications.

9

10 NEW SECTION. **Section 43. Effective dates.** (1) Except as provided in subsection (2), [this act]
11 is effective July 1, 2001.

12 (2) [Sections 34 and 37] are effective contingent upon certification by the public employees'
13 retirement board pursuant to section 65, Chapter 471, Laws of 1999, that the defined contribution plan
14 is ready to become operational or on July 1, 2002, whichever is earlier.

15

- END -